

RULE 16.3 PRETRIAL PROCEDURES IN PRISONER CASES

The following procedures apply to civil cases filed by or on behalf of incarcerated plaintiffs. These procedures do not apply to cases seeking habeas corpus relief.

(A) Complaint and Summons Forms

- (1) Upon written request, the clerk of this court will provide each incarcerated pro se plaintiff with forms of complaint in a § 1983 action, a petition to proceed in forma pauperis under 28 U.S.C. § 1915, United States Marshal service forms and an instruction sheet. The Court strongly urges plaintiffs suing under 42 U.S.C. §1983 to use the Court's complaint form.
- (2) The plaintiff must submit to the clerk of this court one original complaint plus one copy of the complaint for each defendant sued. If exhibits are attached to the original complaint, a complete set of exhibits must be attached to each copy of the complaint.
- (3) All sections of the complaint must be completely filled out. If any section of the complaint does not apply to the plaintiff, the plaintiff must write "does not apply" in the space.
- (4) The original complaint may be handwritten or typed. However, all copies must be carbon copies or photocopies (xerox). No other copies, such as handwritten copies, will be accepted.
- (5) All pleadings must be legible and signed by the plaintiff. If there is more than one plaintiff, each must sign the complaint. A complaint need not be notarized. However, if the complaint contains false statements of material fact, the plaintiff may be subject to dismissal of the case or other sanctions.
- (6) The facts of the complaint should be stated only in the space provided. Legal argument and case citations are not necessary and should not be stated in the complaint. A short statement of names, dates and facts concerning the claim will usually be enough. If the Court requires additional information about a claim, the plaintiff will be ordered to

- (7) The plaintiff must complete and return to the clerk of this court a separate service form for each named defendant. Each form must include the full first and last name of the defendant to be served, (if possible), and a full address where that defendant may be served, usually a work address.
- (8) The plaintiff must mail the complaint, the copies, and the summons forms, along with the filing fee or the petition to proceed in forma pauperis, together in one package to: CLERK, U.S. DISTRICT COURT in the division in which the claim arose.

(B) Partial Payment of Filing Fees (See 28 U.S.C. §1915)

- (1) If prepayment of the initial partial filing fee is made within forty-five (45) days from the date of the court's order on the petition, the inmate will be granted leave to proceed in forma pauperis, the complaint will be filed, and the clerk of this court shall issue summonses for service on the defendants. Thereafter, the agency having custody of the plaintiff must forward payments from the prisoner's account to the Clerk of Court each time the amount in the plaintiff's account exceeds \$10, until the filing fee is paid.
- (2) If partial prepayment of the filing fee is not made within forty-five (45) days from the date of the Court's prepayment order, or if in that time period the petitioner has not shown cause why the partial fee cannot be paid, the petition shall be denied and the case shall be dismissed. If the inmate shows good cause why the initial partial fee cannot be paid, the Court shall review the complaint for the existence of a colorable claim and rule on the petition. Regardless of whether the initial partial filing fee is waived, the plaintiff is responsible for paying the full filing fee in monthly installments.
- (3) A plaintiff may request a waiver of any of the provisions of this rule by filing a motion with the clerk of this court stating in brief what requirements the plaintiff wants waived and why. The Court will consider each motion individually; however, motions to waive these requirements will not be routinely allowed.

(6) Security for Costs

In any case removed to this court under the provisions of 28 U.S.C. §§ 1441 or 1443 in which the plaintiff is a pro se prisoner, who has been barred from proceeding in forma pauperis under the provisions of 28 U.S.C. §1915(g), and who does not meet the exception requirement of that section, the court may require security from the plaintiff for payment of costs. The security may be in the form of cash or a surety bond with corporate or justified sureties acceptable to the court. Failure by the plaintiff to provide the required security may result in the dismissal of the action.

(C) Case Management Order

If practicable, the Court will conduct a merit review of the complaint before summons issues, and enter a Case Management Order delineating the viable claims stated, if any. At any time a Case Management Order is issued by the court defining remaining issues in the case, the case shall proceed solely on those claims identified in the Case Management Order. Any claims not defined in the Case Management Order will not be included in the case, except in the Court's discretion on motion by a party for good cause shown, or by leave of court pursuant to Federal Rule of Civil Procedure 15.

(D) Service of Process

After the complaint is filed and a Case Management Order enters, if any, the clerk of this court shall issue summons for each defendant as directed in the Case Management Order, or for each defendant listed in the complaint if no Case Management Order is entered. Service must be made in accordance with Fed.R.Civ.P. 4. If the Court grants the plaintiff leave to proceed in forma pauperis, service will be attempted by the United States Marshal. If the full statutory filing fee is paid, the plaintiff is responsible for arranging for service of summons. The Case Management Order, if any, will be served with the complaint, as will any scheduling order entered by the court.

(E) Answer

days. A motion to dismiss is not an answer. The answer must be considered a responsive pleading under Federal Rule of Civil Procedure 15(a) and should include all defenses appropriate under the Federal Rules. It is the responsibility of the individual named as a defendant to arrange for representation within that time limit. The Court may **will not** extend the time for answer **unless exceptional circumstances are** for cause shown, at any time in its discretion. Default may be entered against defendants who do not answer within the time limits.

- (2) In prisoner civil rights cases where the plaintiff appears pro se, the answer and subsequent pleadings shall be to the issues stated in the Case Management Order accompanying the process and complaint, if such an order is entered. A defendant need not parse the complaint and respond to it. The responsive pleading shall respond only to the issues stated in the court's Case Management Order issued after merit review of the complaint. If no Case Management Order has entered, the responsive pleading shall be to the complaint.

(F) Scheduling Conference

When the complaint is filed, the Court will enter a scheduling order regarding service and setting the case for a scheduling conference. At the scheduling conference, the parties shall be prepared to argue all pending motions; determine whether all parties have been correctly designated and properly served; discuss the course and progress of discovery and resolve any disputes; determine whether a jury demand has been timely filed; set firm dates for the completion of discovery and the filing of case-dispositive motions. At the conclusion of the scheduling conference, the Court will set the matter for further status conference or for final pre-trial conference. Scheduling conferences will be held by telephone unless otherwise ordered by the court.

(G) Status Conference

A status conference may be set at any time by the Court. At a status conference the parties shall be prepared to argue all pending motions; discuss the progress of discovery and resolve any disputes; review dates for the completion of discovery and the filing of case-dispositive motions. Status conferences will be held by

set for response. Motions to file "instanter" are not viewed favorably by the Court and will not be allowed routinely. Motions will not be specially set or noticed for hearing. The court may rule on any motion after the time for response has passed, whether a response is on file or not.

At his or her discretion, the presiding judge may set any motion for hearing.

(I) Final Pretrial Conference

- (1) As soon as practicable after the close of discovery and the resolution of dispositive motions, the presiding judge will set the case for final pretrial conference. All discovery MUST BE COMPLETED before the conference is held. Appropriate sanctions will be imposed upon any party failing to complete discovery as ordered. No case-dispositive motions will be accepted after the cut-off date for the filing of such motions, except by leave of court and a showing of extraordinary circumstances, e.g., a recently decided relevant court opinion or newly discovered evidence that with due diligence could not have been found during the time allotted for discovery. The conference shall be by personal appearance, by telephone, or by video conference as directed by the Court, with the plaintiff, if not represented, and with the attorneys who will try the case.
- (2) The following documents are to be prepared and exchanged between the litigants, BUT NOT FILED WITH THE COURT, at least 30 days before the date set for the final pretrial conference:
 - (a) A statement of uncontested facts.
 - (b) A statement of contested issues of fact and law.
 - (c) An itemized statement of damages (plaintiff only).
 - (d) A list of names and addresses of witnesses that each party intends to call to testify at the trial, including the names of expert witnesses.

- (g) A list of exhibits, sequentially numbered, which each party intends to offer into evidence.
 - (h) A list of all demonstrative aids to be used at the trial.
- (3) An attorney for the defendants shall prepare a final pre-trial order based on the documents described above, and bring the order to the conference. A copy of the order shall be served on a pro se plaintiff or plaintiff's counsel at least ten days prior to the date set for the conference. The original order shall be presented to the presiding judge at the conference. A suggested form of the order is included as Appendix 2 to these rules. As far as is practicable, the litigants are encouraged to resolve any disputes concerning the order prior to the conference. When the plaintiff is represented by counsel, a final, agreed-to order will be presented at the conference.
- (4) At the final pretrial conference, the presiding judge and the litigants will consider the following:
 - (a) The prospects of settlement. Plaintiff shall make a definite demand for settlement and defendants shall have authority to make a definite offer of settlement.
 - (b) Simplification of the issues for trial;
 - (c) The final witness lists, including the issuance of subpoenas and writs for witnesses;
 - (d) Any problems of evidence;
 - (e) Limitation on the number of expert witnesses;
 - (f) The desirability and timing of trial briefs;
 - (g) Such other matters that may aid in the fair and expeditious trial and disposition of the action;
 - (h) The estimated length of trial.

- (6) At the close of the pretrial conference, the parties and the presiding judge shall sign the pretrial order. If changes or amendments to the order are required, the parties shall complete the changes before they leave the courthouse, or the conference may be recessed to be continued in person within 10 days. The signed pretrial order takes the place of all prior pleadings. Any issue not contained in the final pretrial order WILL NOT BE TRIED. The parties are cautioned to consider the contents of the order very carefully, especially as to jury demand, types of damages sought, claims and defenses.
- (7) A sample form of pretrial order is contained in Local Rules Appendix 2. The parties are cautioned to conform their pretrial order to the sample format.

(J)

Sanctions

Failure of counsel or parties, if not represented by counsel, to appear at any scheduled pretrial conference, including telephone conferences, or otherwise to comply with the provisions of this rule, may result in dismissal, default, awarding of attorney's fees and costs and such other sanctions as may be appropriate.